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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HABITAT FOR HORSES, a Texas non-profit corporation; AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, A New York non-profit corporation; THE CLOUD FOUNDATION, a Colorado non-profit corporation, TONI MOORE; and DR. DON MOORE,

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as Secretary, U.S. Department of the Interior; ROBERT ABBEY, in his official capacity as Director, Bureau of Land Management; KENT WALTER, in his official capacity as Field Manager, Bureau of Land Management, White River Field Office,

Defendants.

10 Civ. 7684 (WHP)

DECLARATION OF FRANCIS G. ACKLEY

Francis G. Ackley, pursuant to the provisions of 28 U.S.C. § 1746, declares, under penalty of perjury, as follows:

1. I am the Wild Horse & Burro Program Leader for the U.S. Department of Interior's Bureau of Land Management ("BLM") Colorado State Office, which is located in Lakewood, Colorado. I have served in this capacity for the past 18 years. In my role as the Wild Horse & Burro Program Leader I am the BLM expert within Colorado on wild horses and burros.

2. My duty station is Canon City, Colorado, approximately 30 miles west of Pueblo, Colorado. As part of my duties, I manage a large wild horse and burro holding and training facility in cooperation with the Colorado Department of Corrections ("the Canon City holding facility"). The Canon City holding facility has a maximum capacity of 3,000 animals. In my tenure as facility manager for the past 18 years, I have been responsible for the daily welfare, health and safety of many tens of thousands of wild horses and burros, as well as their shipment, adoption, and/or training. I am not a veterinarian, but I have worked with and consulted with numerous veterinarians through the years in managing the horses held at the Canon City holding facility. I deal with horse health issues on a daily basis, and I have personally treated or been responsible for the treatment of thousands of wild horses for all types of diseases and injuries.

3. In October 2010, the White River Field Office of BLM, located in Northwest Colorado, gathered and removed horses from areas outside the area known as Piceance East Douglas Herd Management Area, including the area known as the North Piceance Herd Area (the "Gather"). The purpose of this declaration is first, to explain what happened to the horses that were removed during the Gather (the "Gathered Horses") and why it would be impossible for BLM to separate those horses based on the areas from which they were removed during the Gather; and second, to explain that BLM did not apply a categorical exclusion pursuant to the National Environmental Policy Act ("NEPA") 42 U.S.C. §§ 4321, et seq., to the processing of the Gathered Horses at the Canon City holding facility.

4. In October 2010, the Canon City holding facility received two shipments of Gathered Horses. The first shipment of horses was on October 16, 2010, and included 28 Gathered Horses. The second shipment was on October 23, 2010, and included another 42 Gathered Horses.

5. After the Gathered Horses arrived at the Canon City holding facility, in accordance with BLM's regular procedures, they were separated from the rest of the horses being held at the Canon City holding facility for approximately 4-6 weeks while they were vaccinated, dewormed, branded, and tagged. After that period, in accordance with BLM's normal procedures, the Gathered Horses were mixed in with the rest of the approximately 2,825 horses at the Canon City holding facility.

6. During the 4-6 week period that the Gathered Horses were kept separate from the rest of the horses at the Canon City holding facility they were freeze branded with markers that identify each horse by the year of its birth, the state in which it was gathered, and an identifying number. Relying on those branding markers, it would be possible to separate the Gathered Horses from the rest of the horses at the Canon City holding facility. Those branding markers would not, however, provide any way to: (1) distinguish between the Gathered Horses that arrived at the Canon City holding facility on October 16, 2010 as compared to October 23, 2010, (2) indicate the date on which the horse was originally gathered, or (3) indicate from which area outside the Piceance East Douglas Herd Management Area the horse was removed. I am also not aware of any other method BLM could employ to accurately identify which of the Gathered Horses were removed from the public lands contained in the North Piceance Herd Area.

7. After the Gathered Horses arrived at the Canon City holding facility, three of the 70 Gathered Horses were euthanized for medical reasons after consultation with a veterinarian. One of the Gathered Horses has also been adopted by a private party.

8. Finally, I understand that the plaintiffs in this action allege that BLM applied a "categorical exclusion" pursuant to NEPA to the processing of the Gathered Horses at the Canon City Holding Facility. That allegation is factually incorrect. As the Wild Horse & Burro

Program Leader for the BLM Colorado State Office, I would have been involved in the application of any such categorical exclusion. BLM did not apply a NEPA categorical exclusion to the processing of the Gathered Horses.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Canon City, Colorado on this 28th day of January, 2011.

Francis G. Ackley
Wild Horse & Burro Program Leader
Bureau of Land Management
Colorado State Office